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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/749,092	12/30/2003	Roy O. Manning	PC-1496	7959
23717	7590	03/08/2005	EXAMINER	
LAW OFFICES OF BRIAN S STEINBERGER 101 BREVARD AVENUE COCOA, FL 32922			LEE, WILSON	
			ART UNIT	PAPER NUMBER
			2821	

DATE MAILED: 03/08/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/749,092	ROY O MANNING	
	<b>Examiner</b>	<b>Art Unit</b>	
	Wilson Lee	2821	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on 30 December 2003.

2a)  This action is **FINAL**.                            2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## **Disposition of Claims**

4)  Claim(s) 1-20 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5)  Claim(s) \_\_\_\_\_ is/are allowed.

6)  Claim(s) 1-20 is/are rejected.

7)  Claim(s) \_\_\_\_\_ is/are objected to.

8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on \_\_\_\_\_ is/are: a)  accepted or b)  objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All    b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1)  Notice of References Cited (PTO-892)  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3)  Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 12/30/03.

4)  Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_ .  
5)  Notice of Informal Patent Application (PTO-152)  
6)  Other: \_\_\_\_ .

### **Claim Objections**

Claims 1, 6, 11, 12, 17, 20 are objected because of the following informalities:

In claim 1, line 3, should "between approximately 760 and approximately 610 nanometers" be changed to --between 610 and 760 nanometers--?

In claim 6, line 2, should "from at least one of" be changed to --from at least one of a group consisting of--? Line 8, should "from at least one of" be changed to --from at least one of a group consisting of--?

In claim 11, line 4, should "between approximately 760 and approximately 610 nanometers" be changed to --between 610 and 760 nanometers--?

In claim 12, lines 4-5, should "between approximately 760 and approximately 610 nanometers" be changed to --between 610 and 760 nanometers--?

In claim 17, line 2, should "from at least one of" be changed to --from at least one of a group consisting of--? Line 8, should "from at least one of" be changed to --from at least one of a group consisting of--?

In claim 20, line 4, should "between approximately 760 and approximately 610 nanometers" be changed to --between 610 and 760 nanometers--?

### **Claim Rejections - 35 U.S.C. 112**

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding Claims 1, 11, 12, 20, "between approximately 760 and approximately 610 nanometers" is vague because the term "approximately" renders uncertainty to the claimed invention.

Claims 2-10, 13-19 are indefinite by virtue of their dependency on claims 1 and 12.

### **Claim Rejections – 35 U.S.C. 102**

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Claim 1 is rejected under 35 U.S.C. 102(e) as being anticipated by MacKinnon et al. (6,781,691).

Regarding Claim 1, MacKinnon discloses an anti-carcinogenic (light for treating cancer) night light (See abstract and Col. 2, lines 8-22) comprising a light (light source 4) for emitting a visible light emission having a wavelength between 610 and 760

nanometers (See Col. 1, lines 25-30); and a power source (inherent feature since electric light source requires power source) for the light, wherein the light is used as a night light emits a safe and non-carcinogenic visible light emission (See abstract and Col. 2, lines 8-22) in a darkened or semi-darkened environment (e.g. night-time construction sites).

### **Claim Rejections – 35 U.S.C. 103**

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 2 and 3 are rejected under 35 U.S.C. 103(a) as being unpatentable over MacKinnon et al. (6,781,691).

Regarding Claims 2 and 3, as discussed above, MacKinnon essentially discloses the claimed invention but does not explicitly disclose a plastic case for housing the night light, and a battery power supply or a plug from wall outlet as a power source. However, it would have been obvious to one of ordinary skill in the art to provide a plastic housing for enclosing MacKinnon's device in order to protect the electronic components from any damage and moisture since plastic case is well known and commonly used housing to a skilled in the art. Further, it would have been obvious to one of ordinary skill in the art to use a wall outlet plug as a power source in order to use MacKinnon's device indoor and battery as a power source in order to render portability

since wall outlet plug and battery are well known and commonly used power source a skilled in the art.

### **Allowable subject matter**

Claims 4-11 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Claim 12-20 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.

The following is a statement of reasons for the indication of allowable subject matter: The prior art fails to disclose the following limitations, in combination with the remaining elements disclosed in claim 12: preventing disruptions of secretions of pineal glands of sleeping, sleepy, or dozing humans and animals that are located in the darkened or semi-darkened environments where the night light is located.

### **Conclusion**

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Contag et al. (6,649,143) discloses a non-invasive localization of a light emitting conjugate in a mammal.

### **IDS**

The IDS form is incorrect because there is no space for Examiner to enter his name and date. References cited have not been considered yet. Correct form is required.

**Correspondence**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Wilson Lee whose telephone number is (571) 272-1824.

Papers related to Technology Center 2800 applications may be submitted to Technology Center 2800 by facsimile transmission. Any transmission not to be considered an official response must be clearly marked "DRAFT". The official fax number is (703) 872-9306.

Information regarding the status of an application may be obtained from the Patent Application Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Wilson Lee  
Primary Examiner  
U.S. Patent & Trademark Office